

Only 70 Days to Dodd Frank Mortgage Requirements

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Absorbing all 1,300 pages of the changes precipitated by the Dodd Frank Act along with multiple subsequent interpretations has been a compliance officer's nightmare. In seventy days the bulk of the mortgage regulations will take affect and understanding which ones apply to your products and services is vital.

Listed below is a breakdown of the regulations affecting servicing:

- Periodic statements
- ARM interest rate adjustments
- Prompt payment crediting
- Forced placed insurance
- Information requests
- Error resolution
- General servicing policies and procedures
- Continuity of contact
- Loss mitigation for troubled mortgages
- Compensation rule regarding the posting of credit insurance premiums

Rules affecting origination include:

- Qualified mortgages (QM),
- High Priced Mortgages
- Cap on Fees
- Ability to Repay

Many of the regulations have exemptions. From the servicing side, the exemptions revolve around asset size (\$2b) and/or total number of loans serviced (5k). But these exemptions also have interpretations regarding credit union affiliates and the fact that you may have to add their total portfolio with your own when considering the exemptions. The CFBP has issued numerous guides to help smaller institutions come to grips with the proposed rules including readiness guides, flow charts, and small entity guidance for each of the individual rules.

Attached to this document is Alpena Alcona Credit Union's evaluation of the mortgage servicing rules. The author does an excellent job of evaluating the rules in comparison to the credit union's operations, products, and internal procedures. The areas that need management's attention are also highlighted. If your credit union has not gotten this granular I would encourage you to get started. Seventy days is not that far away.

MORTGAGE SERVICING RULES
REGULATION Z
Effective January 10, 2014

The new mortgage servicing rules affect just that – the servicing of mortgage loans, and amend both Regulation Z (Truth in Lending Act) and Regulation X (Real Estate Settlement Procedures Act). This particular summary statement will discuss the rules impacting Regulation Z. A breakdown of such rules is described below.

To clarify, the majority of the mortgage servicing rules provide for a small servicer exemption; however, due to our affiliation with Neighborhood Mortgage Solutions our credit union does not meet the exemption requirements. We must, therefore, comply with all servicing requirements indicated in the Mortgage Servicing Rules issued by the Consumer Financial Protection Bureau that become effective January 10, 2014.

The mortgage servicing rules apply to “mortgage loans” which are defined in the regulation to mean, closed end consumer credit transactions secured by a dwelling – HELOCs are excluded.

The **FIRST RULE** is in relation to **INTEREST RATE ADJUSTMENTS**; however, such rules impact adjustable rate mortgage loans (ARMs) specifically and, therefore, do not impact the credit union as our mortgage program does not incorporate such product type.

The **SECOND RULE** discusses **PERIODIC STATEMENTS** and requires the credit union to provide all mortgage loan borrowers with a statement each billing cycle, showing information on the payment due and the application of past payments. Of course, it is not as simple as issuing a periodic statement to each member with a mortgage loan. There are specific timing, form and content requirements that go along with the periodic statement rule, each of which are discussed below.

Frequency, Timing and Delivery – The rules state that the credit union must send a periodic statement each billing cycle, which in our case means monthly because we require monthly payments on our mortgage loans.

The underlying issue, however, is not in the frequency of delivery but in the timing. The rules indicate that the credit union must deliver or mail the statement within a reasonably prompt time after the payment due date or the end of the courtesy period provided for the previous billing cycle.

That statement has three very key elements – reasonably prompt, payment due date and courtesy period – all of which are defined within the regulatory content. Payment due date is pretty self-explanatory, it’s the date the payment is due. The courtesy period or the period in which we do not impose a late period is also quite clear. Reasonably prompt, however, is defined by regulation to generally mean within four days of the close of the courtesy period.

The timing concept in and of itself is pretty straightforward. The issue is our processes. In-house mortgage loans do not have a specific payment due date – that is picked by the member, and the courtesy period is 30 days. Secondary market mortgage loans have a specific due date – the first of each month; however, the courtesy period is only 15 days.

Our data processing system has further indicated that a mortgage loan must meet the following criteria so that it will be reported accurately on the periodic statement: payment due dates need to be between the 1st and the 7th of the month, courtesy period end needs to be within the same month as the due date and the payment frequency needs to be recorded as “M” for monthly.

To meet the time constraints indicated in the periodic statement requirements of the regulation and our data processing system, the credit union will need to adjust its payment schedules as well as its courtesy periods for in-house products – secondary market loans fall within the criteria noted above.

The credit union will also need to evaluate all in-house mortgage loans recorded in the CU*Base system to 1) determine the number of loans impacted by the new rules and 2) ensure the loan account configurations match the periodic statement criteria reported above.

Another area of interest to us as it relates to the timing and delivery of periodic statements concerns members who have filed bankruptcy. Currently, the credit union stops delivery of periodic statements upon notice of bankruptcy so that we do not give the appearance of trying to collect on the debt. Under the new mortgage servicing rules, we cannot do this. The credit union must send periodic statements to all mortgage loan borrowers even those in bankruptcy. We will need to discontinue this process and continue to send periodic statements to mortgage loan borrowers even when the borrowers are in bankruptcy.

At this time, the credit union also allows members to opt out of receiving periodic statement altogether. This practice is also going to have to be amended at least for members who have an open mortgage loan account with the credit union. The new rules revoke this option, stating a consumer may not opt out of receiving periodic statements altogether.

To ensure compliance with the above two requirements – bankruptcy and opt out – the credit union will need to evaluate applicable statement mail group codes (1 = no mail, 4 = snow birds, 9 = bankruptcy) and adjust as necessary. Additionally, department supervisors will need to notify their staff of this procedural change.

Content – The rules also specify the information that must be included on the periodic statement and/or disclosed to the borrower. The rules provide sample statements/disclosures within its appendix. Our data processor is adjusting our statement program to meet the content and formatting requirements of the new servicing rules – utilizing the appendix as a guide; however, it will not be including all required data in the periodic statement. Certain data is unique to a credit union’s operations and would be extremely difficult for CU*Answers to

configure and publish. The credit union will therefore be responsible for ensuring it adjusts and/or develops various disclosures and/or notifications to meet new compliance requirements. A summary of the information requirements is as follows:

<i>Information Group Requirement</i>	<i>Information and Presentation Requirements are being addressed by...</i>
Amount due	CU*Answers
Explanation of amount due	CU*Answers
Past payment breakdown	CU*Answers
Transaction activity	CU*Answers
Partial payment information	Credit Union
Contact information	CU*Answers
Account information	CU*Answers (Prepayment penalty info will not be programmed will default to “no prepayment penalties.”)
Delinquency information	Credit Union

As indicated above, our data processor will be handling the bulk of the periodic statement compliance requirements, but it will not be programming for partial payments. Their reasoning – it is not consistently applied across credit unions. Our credit union does accept partial payments for in-house mortgage loan products and on rare occasions for secondary mortgage loan products.

Partial payments on in-house mortgage loans are credited upon receipt and would therefore not need to be accounted for in a separate disclosure statement. The payment would be reflected within the transaction activity section of the periodic statement.

For secondary market loans, the credit union does not apply a partial payment unless the borrower wants to make a principal only payment which would be in addition to the normal monthly payment. If the member does, however, only submit a portion of the payment the credit union may freeze the partial payment in the member’s regular share account until the remainder of the money is received. This, in accordance with the new regulations, is considered holding the funds in a suspense or unapplied funds account – a process that now triggers additional disclosure requirements.

For that reason, the credit union will need to evaluate its secondary market payment processes. Our current although rare process of freezing the funds requires us to disclose, either separately or in conjunction with our periodic statement, information on what must be done for the funds to be applied. (See payments section below for more information on partial payment options.)

The second disclosure area that prompts research is the reference that prepayment penalty data will be programmed to state “no prepayment penalties” for all CU*Answers clients. This,

however, is not a concern for us as prepayment penalties do not apply on any of our mortgage loan products.

The third disclosure requirement noted above that will not be addressed by our data processor and will therefore need to be manually processed by the credit union relates to delinquency information. The rules require the credit union to disclose certain information to the borrower when he/she is at least 45 days delinquent.

In our case, information will not be disclosed on the periodic statement itself. A separate letter will need to be issued disclosing: 1) the date the consumer became delinquent, 2) notification of possible risks and expenses the consumer could face, 3) an account history showing the previous 6 months or the period since the last time the account was current – whichever is shorter, 4) notice of any loss mitigation program the consumer has agreed to if applicable, 5) notice that we have made the first notice or filing required to start a foreclosure if applicable, 6) total payment the consumer would have to make to bring the account current and 7) reference to homeownership counselor information.

For in-house mortgage loans, our credit union submits a 30-day letter to all delinquent borrowers. If no response is received from the member within 10 days, a 40-day letter is sent by our attorney. This is known as the first foreclosure letter. Secondary market mortgage loans that become greater than 30 days delinquent are forwarded to Neighborhood Mortgage Solutions for processing – delinquency notification processes follow Fannie Mae guidelines.

The credit union will need to amend its in-house delinquency notification documents and processes to comply with the new servicing rules. Forms will need to be designed based on the information noted above and with reference to TILA's mortgage servicing rules appendix. Additional consideration will also need to be given to the new early intervention notice required by RESPA's mortgage servicing rules. The two documents, RESPA's early intervention notice and TILA's delinquency notice, are intended to complement each other. The credit union will also need to consult with its CUSO, Neighborhood Mortgage Solutions, regarding its notice resolution for delinquent secondary market mortgage loans.

The rules do provide for an exclusion from the periodic statement requirements if the credit union issued coupon books to our mortgage loan borrowers. This would alleviate many of the above mentioned program adjustments; however, this option is not a focus of the credit union's data processor and therefore is not an option for us to rely on at this time. The data processing system does currently provide for coupon books to be printed; however, the content of the current books do not meet the requirements of the new regulation. This option would be of great benefit to our credit union; however, it is not being significantly researched at this time because of the limitations imposed by our data processor.

The credit union may want to consider pursuing the availability of this option with its data processor. Otherwise, it is important to note that our data processor considers the new periodic mortgage statement features to be optional. The credit union will need to activate

the feature prior to the January 31, 2014 statement run so that the appropriate data will be included on our member statements.

The **THIRD RULE** amending Regulation Z discusses **PAYMENT PROCESSING** requirements for mortgage loan accounts. It specifically addresses requirements for mortgage servicers to promptly credit payments and promptly respond to requests for payoff statements. The details of the new rules are discussed below.

Prompt payment crediting – Prompt payment rules are actually not new. They have been in effect for quite some time; however, these rules expand upon the previous rules to include requirements for partial payments.

Before we evaluate the partial payment requirements, let's first define "periodic payment" per the CFPB's mortgage servicing rules. A periodic payment is considered the amount necessary to cover principal, interest and escrow (if applicable). The credit union is to credit such payments upon receipt – a normal process for our credit union.

A periodic payment does not include amounts required to cover late fees, other fees or non-escrow payments the credit union has advanced on the borrower's behalf. The rules also prohibit the pyramiding of any such late fees which is also not a concern for our credit union. We do not assess additional fees simply because the borrower did not pay the fee. The credit union assesses the fee following expiration of the courtesy period and asks the borrower to pay it at the time of periodic payment. If the fee is not paid at that time, it is added to the payoff amount – it is not "pyramided."

A payment received that is less than the amount due for a periodic payment is considered a partial payment. Based on the new rules, the credit union has three options when it comes to processing partial payments: 1) credit the partial payment upon receipt, 2) return the partial payment to the consumer or 3) hold the payment in a suspense or unapplied funds account. If the credit union holds the payment in a suspense account, the funds must be monitored, disclosed in accordance with the periodic payment requirements noted above and when enough funds have accumulated the payment must be promptly credited to the mortgage loan account.

As mentioned in the periodic payment section above, the credit union does accept partial payments. For in-house mortgage loans, payments are credited immediately. And, on rare occasions partial payments may be accepted and "froze" in a member's savings account – a practice that will now trigger partial payment requirements.

The credit union will need to evaluate its secondary market payment processes and determine what partial payment option would be most suitable for its operations. As noted above, it is perfectly acceptable to return any partial payment received by a borrower; however, in doing so the credit union will need to carefully consider both reputation and credit risk factors (i.e. delinquent loan accounts) associated with returning a payment. If partial payments continue

to be accepted even in the rare instances that they currently are, the credit union will need to devise procedures that will ensure compliance with the prompt payment crediting and periodic statement disclosure rules.

Payoff statements – The payment processing rules also require servicers to promptly respond to requests for payoff statements. The rules specifically state that services must respond to such requests within seven business days of written receipt for such request. This particular rule will not impact credit union processes as we generally respond to such requests within two business days.

MORTGAGE SERVICING RULES
REGULATION Z
Effective January 10, 2014
*****UPDATE*****

The previously issued summary statement referencing the Truth in Lending Act's new periodic statement requirements indicated, "Another area of interest to us as it relates to the timing and delivery of periodic statements concerns members who have filed bankruptcy. Currently, the credit union stops delivery of periodic statements upon notice of bankruptcy so that we do not give the appearance of trying to collect on the debt. Under the new mortgage servicing rules, we cannot do this. The credit union must send periodic statements to all mortgage loan borrowers even those in bankruptcy. We will need to discontinue this process and continue to send periodic statements to mortgage loan borrowers even when the borrowers are in bankruptcy."

The statement further recommended the credit union amend its current process and adjust all accounts flagged with a statement mail group code of 9 (bankruptcy).

On October 15, 2013, the Consumer Financial Protection Bureau issued updated guidance on such rules indicating, "...further assessment is warranted regarding how bankruptcy protections intersect with these servicing requirements and how to ensure that the servicing communications do not confuse consumers regarding the status of their loans."

For that reason, the Internal Audit/Compliance Department is retracting its previous statement and recommendation and suggests the credit union continue its current practice of halting the delivery of periodic statements upon notice of bankruptcy. All other recommendations indicated in the original Mortgage Servicing Rules – Regulation Z compliance summary remain.

MORTGAGE SERVICING RULES
REGULATION X
Effective January 10, 2014

The new mortgage servicing rules affect just that – the servicing of mortgage loans, and amend both Regulation Z (Truth in Lending Act) and Regulation X (Real Estate Settlement Procedures Act). This particular summary statement will discuss the rules impacting Regulation X. A breakdown of such rules is described below.

To clarify, the majority of the mortgage servicing rules provide for a small servicer exemption; however, due to our affiliation with Neighborhood Mortgage Solutions our credit union does not meet the exemption requirements. We must, therefore, comply with all servicing requirements indicated in the Mortgage Servicing Rules issued by the Consumer Financial Protection Bureau that become effective January 10, 2014.

The mortgage servicing rules apply to “mortgage loans” which are defined in the regulation to mean, closed end consumer credit transactions secured by a dwelling – HELOCs are excluded.

The **FIRST RULE** is in relation to **FORCE PLACED INSURANCE**. It establishes limits on the use of force placed insurance, imposing specific notice and timing requirements. Fortunately, an evaluation of our credit union’s current processes and corresponding notices determined that we meet the requirements of the new force placed insurance rules already – no further action is required.

The **SECOND RULE** discusses **ERROR RESOLUTION AND INFORMATION REQUESTS** that expand upon existing requirements. The credit union is to establish requirements for responding to a consumer’s written information request or complaint of error(s). The credit union has procedures in place to respond to such requests; however, the procedures are not formalized and do not require “written requests” by the consumer.

In general, the new rules require the credit union to respond to any qualified written request received from a borrower (or an authorized person), asking us to resolve an error or to send information about their account. In doing so, the credit union must follow specific timetables and reporting requirements.

Written Requests – Written requests must include: the name of the consumer, information that enables us to identify the mortgage loan account and for error notices – the error the consumer believes has occurred or for information requests – a statement of the information the consumer is requesting.

The rules do not require us to characterize the notice received from the consumer as a “notice of error” or “information request,” but the rules do require us to evaluate the written notice and respond accordingly.

The rules further define specific categories of errors for which the credit union must respond, but also describe various situations that do not trigger error resolution or information request response procedures. All of which are very cumbersome and are not

being defined within this summary statement, but should be incorporated in written error resolution and information request procedures that need to be developed in response to these new rules.

Timetable – The new rules indicate the credit union is to:

- Acknowledge receipt of the request or notice of error within 5 days. (If the credit union corrects an error or provides the requested information and notifies the consumer within 5 days, an acknowledgment is not necessary.)
- Correct the error and provide the consumer written notification of the correction or conduct an investigation and provide the consumer written notification that no error occurred within 30 days.
- Provide the information or conduct a reasonable search for the requested information and provide the consumer with a written notification explaining why the information is not available within 30 days.

Separate response timelines were established for error notices relating to payoff statements (response required within 7 days) as well as foreclosure processes (response required prior to the date of foreclosure sale or within 30 days whichever is earlier).

The rules also provide for a 15 day extension of the 30 day period (foreclosure process excluded) so long as the credit union properly notifies the consumer.

Response (Notice of Error) – When responding to a consumer’s notice of error, the credit union must adhere to the timelines noted above – acknowledge within 5 days and respond within 30.

If a correction is made, the credit union must notify the consumer in writing. The written notification must include an explanation of the correction, the effective date of the correction and credit union contact information for further assistance.

If it is determined no error occurred, the credit union must send a written notice to the consumer explaining that no error occurred. The notice must also include:

- A description of how such determination was made (i.e. the reasons no error occurred),
- A statement of the consumer’s rights to request the documentation relied upon to reach such determination as well as information on how the consumer can request such documents, and
- Credit union contact information for further assistance.

Response (Request for Information) – When responding to a consumer’s request for information, the credit union must adhere to the timelines noted above – acknowledge within 5 days and respond within 30.

If the credit union can provide the information, it must share it in writing and include credit union contact information for further assistance.

If the requested information is not available, the credit union must provide written notification to the consumer. The notification must indicate such determination, the basis for the determination and credit union contact information for further assistance.

The rules further state that the credit union can request documentation from the consumer in connection with the investigation of the asserted error. But, the credit union cannot require the consumer to provide the information as a condition of investigation, nor can it determine that no error occurred because the consumer did not provide the information. The credit union must conduct a reasonable investigation even if the requested information is not provided.

The credit union may not charge fees for responding to notices of error or information requests, and it may not require a consumer to make any payment owed to you as a condition for providing a response.

And, for 60 days following the receipt of a notice for error, the credit union may not furnish adverse information to any consumer reporting agency regarding any payment that is subject of the notice of error.

To comply with the above error resolution and information request rules, the credit union will need to document and appropriately adjust its current response processes – consumer notice requirements, credit union response requirements and response timelines.

Written acknowledgements and response templates should also be devised to ensure consistency in response to error resolution or information requests.

The next rule, the **THIRD RULE** establishes requirements for **EARLY INTERVENTION WITH DELINQUENT CONSUMERS**. This rule requires the credit union to establish (or make a good faith effort to establish) live contact with a consumer by his/her 36th day of delinquency, and if appropriate to their situation, promptly provide information on loss mitigation options that may be available. Otherwise, the rule requires the credit union to provide such loss mitigation information by the 45th day of delinquency. (Bankruptcy members may be excluded from early intervention requirements.)

Live contact with the borrower includes telephoning or conducting an in-person meeting with the borrower, but not leaving a recorded phone message.

Good faith efforts to establish live contact consist of reasonable steps under the circumstances to reach a borrower, and may include telephoning the borrower on more than one occasion or sending a written or electronic communication encouraging the borrower to establish live contact with the servicer.

The credit union's delinquency notice will not be considered a "good faith effort." The rule states, "A servicer may, but need not, rely on live contact established at the borrower's initiative to satisfy the live contact requirement..." The purpose and intent of the rule is for the servicer to establish personal contact with the borrower to discuss the circumstances of a borrower's delinquency – not to simply notify them that they are delinquent and ask them to contact the credit union.

The credit union's policy currently states member contact will be attempted around the 15th day to see why no payment has been received. An "attempt" will no longer suffice. The credit union will need to make every effort to contact the member and speak to them directly before the 36th day of delinquency. And, based on the information obtained during the conversation the credit union may need to "promptly inform" the borrower of available loss mitigation options – that is at the discretion of the credit union and based on the circumstance presented.

For example, it would be reasonable and appropriate for the credit union to provide loss mitigation options to a member who indicates during live contact that he/she has lost his/her job, but it would not be appropriate to provide loss mitigation options to a member who provided a reasonable promise to make a full late payment during the live contact.

Now, the term "promptly inform" may be a little misleading in context as it makes one assume you must provide specific loss mitigation information to the borrower right away; however, that is not the case. The credit union does not need to provide the particulars "promptly." It simply needs to generally disclose orally, in writing or through electronic communication that loss mitigation options may be available.

Written notice of loss mitigation options is, however, required by the 45th day of delinquency even if the credit union provided such information during an oral communication with the consumer as described above. Written notice must be provided only once during any 180-day period and it must include: statement encouraging the member to contact the credit union, telephone number for the personnel assigned to the consumer, mailing address, specific loss mitigation options (if applicable), website and toll free number for homeownership counselors or counseling organization and any additional information the credit unions deems helpful. (Model written notices are available in the appendix to the regulation.)

The credit union currently sends notice of delinquency on the 10th, 17th, 24th and 30th day of delinquency. The first attorney letter is issued to the delinquent borrower on or around the 40th day of delinquency with a second letter issued on or around the 70th day – notices do not meet the timing or content requirements reported above.

Upon review of our current processes with collection department staff members, it seems collection activity on secondary market loans meets the early intervention requirements. This will, however, need to be confirmed with Neighborhood Mortgage Solutions (NMS), our mortgage CUSO.

With in-house mortgage loans, however, member contact is not necessarily made in accordance with the timelines and stipulations recorded above. To ensure compliance with the early intervention requirements, the credit union will need to evaluate its current collection practices and adjust as necessary. The credit union must make certain live member contact is made prior to the 36th day of delinquency and loss mitigation options are made available in a timely manner but no later than the 45th day of delinquency.

Loss mitigation options will need to be evaluated and described within credit union policy and/or procedure. New loss mitigation notices will also need to be developed based on the requirements identified above and in accordance with the model notices provided in the appendix to this regulation.

The credit union should also consult with its attorney as the timing and content of his notices will also needs to be adjusted to meet requirements of the new early intervention rules.

Additional consideration will also need to be given to the delinquency notification requirements of Regulation Z's (Truth in Lending Act) mortgage servicing rules – TILA's delinquency notice and RESPA's early intervention notice requirement are meant to complement each other. (See also Mortgage Servicing Rules – Regulation Z compliance summary submitted for review on October 10, 2013.)

The **FOURTH RULE** expands upon the previously discussed early intervention rules and imposes rules related to **CONTINUITY OF CONTACT WITH DELINQUENT CONSUMERS**. This rule requires the credit union's policies and procedures to provide delinquent borrowers with access to personnel who can assist them with loss mitigation options where applicable.

The credit union is to assign personnel to delinquent borrowers by the time it sends the 45-day written notice required by the early intervention requirements. Such personnel must remain available for contact until the consumer has made, without incurring a late charge, two consecutive payments in accordance with the mortgage or any loss mitigation agreement – the clock resets after the two payments are made.

Policies and procedures are to be designed to ensure the delinquent borrowers can reach their assigned personnel by phone, and the assigned personnel can respond to the borrowers inquires. More specifically, the assigned personnel must be able to provide the borrower with accurate information about:

- Available loss mitigation options
- How to submit a loss mitigation application, get it evaluated and how to appeal the application if it is denied
- The status of the submitted loss mitigation application
- The circumstance under which the credit union may refer consumers to foreclosure
- Loss mitigation deadlines
- How to submit a written notice of error or information request

Assigned personnel must also be able to provide a timely (3 days) live response to consumers who call and have to leave a message, and also be able to retrieve certain information in a timely (3 days) manner to include:

- A complete record of the consumer's payment history
- All written information the consumer has provided in connection with a loss mitigation application

The rules also require the credit union to interact with any person authorized to act on the consumer's behalf. The credit union has procedures in place to validate such persons; however

these procedures are not documented. Written procedures should indicate, “The credit union will require any person, who claims to be the agent of a borrower, to provide documentation from the consumer stating the alleged agent is acting on his or her behalf.”

It is important to note, the credit union makes every effort to keep in contact with its delinquent borrowers and also works closely with such members to avoid foreclosure – notices, attorney letters, verbal and/or face to face contact. The credit union processes, however, do not consistently meet the timetables recorded within the regulations, are not documented and are not as streamlined as the regulation will now require.

More responsibility will have to be placed on our collection department personnel due to the “assigned personnel” requirements and the significant increase in borrower communication requirements – both verbal and written. (Continuity of contact must be assigned to single purpose personnel (i.e. collection department) or multi-purpose personnel, but not both which we currently do.) Current staffing levels will in all likelihood not be sufficient to meet the requirements of the new servicing rules.

With that being said, merely having staff available to help delinquent borrowers is not enough. The staff must also be able to adequately address the borrower’s inquiries or loss mitigation requests, and must be able to perform functions that are calibrated toward, among other things, facilitating the review of borrowers for foreclosure avoidance options. Skills our current collection team have not been trained to do, at least not to the extent required by the new servicing rules.

Policies and procedures must be developed to ensure compliance with the continuity of contact requirements; however, before such processes can be developed, credit union management will need to evaluate our current collection practices. From initial contact with the delinquent borrower to available loss mitigation strategies, from staff responsibilities to training – the entire process will need to be evaluated and appropriately adjusted.

The **FIFTH RULE** corresponds with the two previous rules. It discusses **LOSS MITIGATION PROCEDURES**, and requires the credit union to develop and implement policies and procedures that properly evaluate consumers for loss mitigation options.

Application Process – As indicated above, the credit union must provide a delinquent borrower with any available loss mitigation options no later than the 45th day of delinquency. Following notice of available mitigation options, the credit union will need to work with the delinquent borrower to complete a timely application; however, the term “application” is an “expansive concept.” Yes, that is how it is worded by the CFPB – an expansive concept; meaning we need to read between the lines.

For example, a borrower who expresses an interest in applying for a loss mitigation options during a live contact and provides information the credit union would evaluate in connection with a loss mitigation application is considered to have “applied.” Or, if the borrower requests the credit union to determine if he/she is “prequalified” for a loss mitigation program the borrower has “applied.” It is then up to the credit union to guide them through the full

application process, and we must consider all options at once – we cannot require multiple applications for multiple modification options.

Upon receipt of an application as described above, the credit union must first determine if the application is complete or incomplete, and we then must acknowledge its receipt within 5 days (so long as the application is received 45 days or more before a foreclosure sale).

If the application is determined to be incomplete, the credit union must provide notice within 5 days – acknowledging receipt but also informing the consumer the application is incomplete. The credit union must also inform the consumer of the documentation and information necessary to consider the application complete, and provide guidance on the appropriate timelines to follow when submitting the information. The credit union must exercise reasonable diligence to make an incomplete application complete – in other words, keep in contact with the member and follow up as necessary.

If, despite our best efforts, the application remains incomplete. The credit union may, at its discretion, evaluate the incomplete application and offer the member a loss mitigation option – nothing in the rules prevent the credit union from providing a specific offer in such instances. The rules dictate the processes that need to be followed for application and evaluation of a complete application.

Evaluation Process – If a complete application is received, the credit union must provide notice to the borrower within 5 days indicating that it is in receipt of a complete application. The application must then be evaluated for all loss mitigation options available to the consumer, not just those that are most favorable to the credit union. (Once again, it is important to note that it is not nor has it ever been credit union practice to “steer” a member – the credit union put its members first.)

In general, complete applications received more than 37 days before a foreclosure sale must be evaluated within 30 days, and, the consumer must be notified in writing of the credit union’s determination – which loss mitigation options, if any, it will offer the consumer.

Loss Mitigation Offers – Consumers have between 7 and 14 days to respond to any offer of loss mitigation. The variance in timetables depends on the date of application. Consumers who submit a complete loss mitigation application 90 days or more before a foreclosure sale have 14 days to accept or reject the offer. Consumers who submit a complete application less than 90 days but more than 37 days before a foreclosure sale have 7 days. If the consumer does not respond within the defined timeframe, the credit union can consider the offer rejected – unless the consumer has submitted payment in accordance with the offer or appealed the decision.

Loss Mitigation Denials – If the credit union denies the consumer’s loss mitigation application, it must send notice to the consumer that states the specific reasons for denial of each loss mitigation option. This means, if the credit union has 4 loss mitigation options and only offers the consumer 1 of those options, it has denied 3 options and must provide notice for all 3 denials. (Note: denials notification can be sent in conjunction with other notice requirements – adverse action notices.)

Appeals Process – Now, based on the type of loss mitigation program and the timing of the application. The credit union may also be required to provide an “appeal” process which also needs to be included in the denial notification reported above. The appeals process is, however, limited to denials of loan modification programs. It is not required for other loss mitigation options, and it only needs to be provided when the complete loss mitigation application is received 90 days or more before a foreclosure sale.

The appeal process must include an “independent evaluation,” meaning the appeal must be evaluated by someone not directly involved in the initial evaluation of the complete application. The credit union has 30 days to evaluate and notify the consumer of its appeal decision. If an offer of loss mitigation is made as a result of the independent evaluation, the credit union must give the consumer an additional 14 days to accept or reject the offer.

Foreclosure Process – The credit union cannot begin the foreclosure process until the consumer is more than 120 days delinquent (an increase from the current 90 day rule).

If the consumer submits a complete loss mitigation application before the credit union makes the first notice or filing for foreclosure the credit union may not begin the foreclosure process until:

- The credit union sends notice to the consumer that he/she is not eligible for any loss mitigation options and the consumer has exhausted the appeal process,
- The consumer rejects all loss mitigation offers or
- The consumer fails to perform in accordance with the loss mitigation agreement.

If the consumer submits a complete loss mitigation application after the foreclosure process has begun but more than 37 days before a foreclosure sale, the credit union must not move for judgment or order of sale until:

- The credit union sends notice to the consumer that he/she is not eligible for any loss mitigation options and the consumer has exhausted the appeal process,
- The consumer rejects all loss mitigation offers or
- The consumer fails to perform in accordance with the loss mitigation agreement. The credit union may, however, proceed with the foreclosure process, including any publication, arbitration or mediation requirements so long as the steps do not cause or directly result in the issuance of a foreclosure judgment or order of sale.

The credit union is not required to comply with any of the above loss mitigation requirements for applications submitted 37 days or less before a foreclosure sale.

Loss mitigation processes for secondary market mortgage loans are outsourced to Neighborhood Mortgage Solutions, our mortgage CUSO; however, the credit union will need confirm proper processes are in place.

Loss mitigation processes for in-house mortgage loans will need to be developed in accordance with the above commentary. Processes will need to be written to ensure: 1) loss mitigation applications are properly completed and evaluated, 2) appropriate timetables are followed 3)

notice is issued to the delinquent borrower following receipt and evaluation of an application, 4) an appeals process is in place and provides for an independent evaluation of the application and 5) foreclosure processes are appropriately followed and implemented only as a remedy of last resort.

An all-inclusive loss mitigation application will need to be developed. Such application will need to incorporate all loss mitigation options that may be available to the delinquent borrower. Appropriate timelines for completion of the application should be included with the information provided to the delinquent borrower as should any and all requests for documentation that may be necessary to consider the application complete.

Loss mitigation notices will also need to be developed – acknowledgement of receipt of application as well as notification of loss mitigation offer or denial. Such notices should also include timelines for review and/or response by the credit union as well as the borrower.

Please note, the above early intervention, continuity of contact and loss mitigation processes will need to be evaluated together to ensure compliance with the requirements. The rules were designed to work in unison.

The final and **SIXTH RULE** associated with RESPA's mortgage servicing rules discusses **GENERAL SERVICING POLICIES, PROCEDURES AND REQUIREMENTS**. These rules require the credit union to establish policies and procedures that address the majority of the rules already discussed, but also incorporates policy requirements for oversight of service providers and records retention and preservation standards.

In other words, the credit union's mortgage loan, modification and collection policies as well as any corresponding procedure manuals and disclosure statements will need to be evaluated in great detail and rewritten to meet the standards reported throughout this summary statement.